

Long-term disability claims-some good news

A Saskatchewan Court has recently awarded a record breaking \$4.5 million punitive damages claim against two long term disability insurance carriers.

The action arose from injuries sustained in 1997 by a welder, Mr. Branco, who, as a result of two relatively minor foot injuries, developed a rare but well-recognized condition known as Complex Regional Pain or Reflex Sympathetic Dystrophy (RSD). This condition is characterized by diffuse pain, swelling, reduced range of motion and changes in temperature and skin color of the affected area. This condition made it impossible for Mr. Branco to work as a welder.

As a result of these injuries Mr. Branco submitted all of the appropriate documentation and attended all reasonable medical examinations requested by his two long-term disability insurance carriers.

However, notwithstanding multiple medical assessments, all of which supported the fact that Mr. Branco was a good hard-working gentleman who was not magnifying his injuries, and who could not return to work, these insurers intentionally delayed payments, missed payment periods and ultimately withheld payments of the disability benefits for up to nine years.

Not surprisingly, during this period of time, Mr. Branco and his family were without funds. They survived on loans from family, in-laws, parents and their own daughter.

The court found that the insurers intentionally withheld payments to Mr. Branco with the hope that lack of money would force Mr. Branco to accept a much reduced settlement offer that the insurers had made to him. He refused, and proceeded with the litigation.

Prior to these injuries, and his treatment at the hands of the insurers, Mr. Branco had been a proud athletic and hard-working individual. As a result of his injuries, and then the conduct of these insurance companies, he lost his ability to support his family and himself. His marriage broke down, he had to re-mortgage his house, and when his daughter married he was unable to even provide her with a wedding present. He was devastated by these events.

As a result of this conduct Mr. Branco naturally became depressed and he developed a recognized chronic adjustment disorder, in addition to the pain and suffering from his RSD.

Throughout his decision the Trial Judge referred to the delaying tactics, and hardball legal positions and actions taken by the insurers as "egregious", "outrageous" and "torturous" which were the cause of Mr. Branco's depression and adjustment disorder.

The Judge ordered Punitive Damages of 1.5 million against one insurer and 3 million against another.

In addition one insurer was ordered to pay \$150,000 and the other \$300,000 for aggravated and mental distress damages.

The decision is significant in several ways. First, it is based upon, and expands a previous Ontario Fire Insurance decision concerning punitive damages. It is therefore probable that the thinking will be used by Ontario Courts going forward.

Also, breach of contract cases seldom include damages for aggravated or mental distress issues. This decision does so in a big way.

The Judge also sets out an important concept. When a person obtains and pays for a disability policy, it is with the intention of obtaining "peace of mind" in knowing that if the person becomes disabled, his income, to the extent that he has contracted coverage, is covered/protected into the future. Therefore, insurers must act in good faith when dealing with these types of cases.

In the Branco case there was no good faith handling of the claim and in fact there was breathtaking bad faith actions by both insurers.

Hopefully, going forward, Ontario insurers will consider the Branco decision when dealing with these types of claims.

This article is not legal advice.